IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE C.N.RAMACHANDRAN NAIR

THURSDAY, THE 2ND AUGUST 2007 / 11TH SRAVANA 1929

WP(C).No. 23753 of 2005(C)

PETITIONER:

K.K.KRISHNAN NAMBOODIRI, S/O.KRISHNAN
NAMBOODIRI, KOSSERY MANA, KANNAMKULANGARA,
P.O.KOORKKENCHERRY, THRISSUR.

BY ADV. SRI.SHOBY K.FRANCIS

RESPONDENTS:
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1. THE ADDITIONAL APPELLATE ASSISTANT
COMMISSIONER, COMMERCIAL TAXES, THRISSUR.

2. THE ADDITIONAL SALES TAX OFFICER,
IVTH CIRCLE, THRISSUR.

3. THE REGISTRAR OF COMPANIES, IST FLOOR,
COMPANY LAW BHAVAN, B.M.C.ROAD, THRIKKAKKARA PO,
KOCHI 21.

4. THE DISTRICT COLLECTOR, THRISSUR.

5. THE DEPUTY TAHSILDAR (RR),
OFFICE OF THE TAHSILDAR, THRISSUR.

6. THE VILLAGE OFFICER, CHIYYARAM
VILLAGE, CHIYYARAM, THRISSUR.

7. FOUR LINKS ENGINEERING AND TYRE MOULDS
(P) LTD., REG.OFFICE, KOORKKANCHERRY,
THRISSUR 7, REPRESENTED BY MANAGER DIRECTOR.

ADDL. 8. VIJAYAN, A.R., IV/496, ADATTUPARAMBIL HOUSE,
AMBALAPURAM, P.O. PERINGADOOR, THRISSUR DIST.

ADDL. 9. SHAHUL HAMEED, SON OF MOHAMMED, VALIYAKATH HOUSE,
KURUMBILAVU P.O., THRISSUR REPRESENTED BY POWER OF
ATTORNEY HOLDER ABBAS, SON OF MOHAMMED, VALIYAKATH HOUSE,
KURUMBILAVU P.O., THRISSUR.

ADDL. R8 IS IMPLEADED VIDE ORDER DATED 27.1.2006 ON IA 15502/05

ADDL. R9 IS IMPLEADED VIDE ORDER DATED 8.3.2007 ON I.A. 3391/07

R1 TO R6 BY G.P. SRI.C.K. GOVINDAN
ADDL. R8 BY ADV. SRI.P.K.SAJEEV
BY ADV. SRI.RENJITH THAMPAN
SMT.P.A.ANITHA

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 02/08/2007, ALONG WITH WPC NO. 6658 OF 2007 WPC NO. 29198 OF 2006
THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1 TRUE COPY OF THE FORM NO. 32 SUBMITTED BY THE 7TH RESPONDENT COMPANY REPRESENTED BY NEW MANAGING DIRECTOR, A.R. VIJAYAN, DATED 15.1.2992

EXT.P2 TRUE COPY OF THE REVENUE RECOVERY NOTICE DATED 9.2.2000 FOR THE PERIOD 1992-93 AND 1993-94 ISSUED BY THE 5TH RESPONDENT AGAINST THE PETITIONER.

EXT.P3 TRUE COPY OF THE REVENUE RECOVERY NOTICE DATED 9.2.2000 FOR THE PERIOD 1995-96 ISSUED BY THE5TH RESPONDENT AGAINST THE PETITIONER.

EXT.P4 TRUE COPY OF THE REVENUE RECOVERY NOTICE DATED 9.2.2000 FOR THE PERIOD 1996-97 ISSUED BY THE 5TH RESPONDENT AGAINST THE PETITIONER.

EXT.P5 TRUE COPY OF THE REQUEST SUBMITTED BY THE PETITIONER TO THE 2ND RESPONDENT.

EXT.P6 TRUE COPY OF THE APPELLATE ORDER DATED 5.2.2000

EXT.P7 TRUE COPY OF THE APPELLATE ORDER DATED 29.5.2000 PASSED BY THE FIRST RESPONDENT.

EXT.P8 TRUE COPY OF THE REVISED REVENUE RECOVERY REQUEST ISSUED BY THE 2ND RESPSONDENT TO THE 5TH RESPONDENT DATED NIL

EXT.P9 TRUE COPY OF THE REQUEST DATED 14.10.2002 ISSUED B Y THE 2ND RESPONDENT TO THE 5TH RESPONDENT.

EXT.P10 TRUE COPY OF THE LETTER DATED 23.2.2005 ISSUED BY THE THIRD RESPONDENT TO THE 7TH RESPONDENT.

9TH RESPONDENT'S EXHIBITS:

EXT.R9(a) TRUE COPY OF ENCUMBRANCE CERTIFICATE DATED 2.9.2004 ISSUED BY THE REGISTRAR OFFICE.

EXT.R9(b) TRUE COPY OF THEREGISTERED SALE DEED DATED 17.7.2004 EXECUTED BY THE 7TH RESPONDENT COMPANY IN FAVOUR OF THE PETITIONER.

EXT.R9(c) TRUE COPY OF THE ENCUMBRANCE CERTIFICATE DATED 14.7.2004

EXT.R9(d) TRUE COPY OF THE REVENUE RECOVERY PROCEEDINGS DATED 14.7.2006 ISSUED BY THE TAHSILDAR, THRISSUR.

EXT.R9(e) TRUE COPY OF THE REPRESENTATION FILED BEFORE THE TAHSILDAR, THRISSUR AND DISTRICT COLLECTOR THRISSUR DATED 1.2.2007

EXT.R9(f) TRUE COPY OF ORDER DATED 29.5.2007 IN WPC 29198 OF 2006

TRUE COPY

P.S. TO JUDGE.

C.N.RAMACHANDRAN NAIR,J.

W.P.C. NO. 23753/05,29198/06 & 6658/2007

Dated this the 2nd day of August, 2007

JUDGMENT

Petitioner in WPC 23753 of 2005 was the Managing Director of company by name Four Links Engineering and Tyre Moulds (P) Ltd., which is in arrears of sales tax for the assessment years 1993-94 to 1996-97. According to the petitioner, recovery proceedings initiated based on original assessments are continued even though assessments got modified by Exts. P6 and P7 orders in appeal issued by the first appellate authority. According to the Government Pleader, modified assessments are issued on 8.2.2001. However, petitioner in WPC 23753 of 2005 relied on Exts. P8 and P9 orders of the sales tax officer whereunder he has withdrawn the revenue recovery proceedings initiated originally and the balance amount stated to be due is very small amount. During pendency of the recovery proceedings petitioner's wife, who was also a director of the company, and other Directors sold one item of property to the common petitioner in the other two WPCs, namely WPC No. 29198 of 2006 and 6658 of 2007.

Since sale deed was executed after arrears fell due, the sale was subject to charge in favour of the State under Section 26A of the K.G.S.T. Act and therefore the purchaser remitted arrears of tax. The payment so made by him is Rs. 2,16,003/-. Since arrears are now paid, there is no scope for continuing recovery proceedings. However, counsel for the petitioner in WPC 23753 of 2005 submitted that criminal complaint is filed by the petitioner in WPC Nos. 29198 of 2006 and 6658 of 2007 against him and others and police are investigating. I do not think any specific direction is called for in the matter because police are free to investigate the case in accordance with law. In the circumstances, there will be direction to the second respondent in WPC 23753 of 2005 to go through the orders in appeal and verify whether revised orders are issued in accordance with directions issued by the appellate authority and if modified orders are not issued revised orders should be issued to the petitioner in that W.P.C. within two weeks from the date of production of a copy of this judgment. It will be open to the petitioner in that W.P. to challenge the revised orders if he has any grievance. However, if the tax paid by the common petitioner in WPC 29198 of

2006 and 6658 of 2007 is in excess of actual amount due, the same should be refunded in accordance with law. The amount deposited by the common petitioner will be adjusted towards tax arrears and it is open to the said petitioner to proceed against sellers for recovery if there is any case for it. All recovery proceedings against the property will stand cancelled as arrears are fully paid.

WPCs are disposed of as above.

(C.N.RAMACHANDRAN NAIR)
Judge